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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,218	12/08/2003	Alessandro Luigi Spadini	J6839(C)	4638

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EXAMINER	
KENNEDY, NICOLETTA	

ART UNIT	PAPER NUMBER
1611	

NOTIFICATION DATE	DELIVERY MODE
10/04/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary	Application No.	Applicant(s)	
	10/730,218	SPADINI ET AL.	
	Examiner	Art Unit	
	Nicoletta Kennedy	1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 July 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-6,9,11-16 and 18-39* is/are pending in the application.

4a) Of the above claim(s) *18-39* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-6, 9, 11-16,* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

Claims 1, 3-6, 9 and 11-16 are currently pending.

Maintained Rejections

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **The rejection of claims 1, 3, 5-6, 9 and 11-13 under 35 U.S.C. 102(b) as being anticipated by Farrell et al. (US 6,063,390) (issued May 16, 2000) as evidenced by ChemBrief (Optigel SH Synthetic Silicate, June 2003, Vol. 3, Iss. 2) is maintained.**

Regarding claims 1, 3, 6, 11 and 13, Farrell et al. teach an effervescent cleansing composition which comprises a mixture of an acid material such as citric acid and an alkaline material such as sodium bicarbonate (abstract). Water contact causes the combination to effervesce (abstract). The alkaline material is a substance which can generate a gas such as carbon dioxide when contacted with water and the acidic material (column 2, lines 19-23). In one embodiment, Farrell et al. teach a composition comprising potassium bicarbonate, lactic acid (satisfying claim 1a, 1b, 1d and 1f), sodium sulfosuccinate present at 11.6% by weight (satisfying claim 1e) and Optigel SH (sodium magnesium silicate) (satisfying claim 1c and e) (Table IV).

Regarding claims 5 and 12, ChemBrief discloses that Optigel SH has a particle size of about 0.05 microns and forms a lamella structure upon contact with water and surfactants (p. 1-3). Farrell et al. explain that Optigel SH improves after feel properties on skin (column 4, lines 38-39).

Regarding claim 9, the remaining components in the formulation of Table IV are either polar, non-polar and/or combinations thereof (Table IV).

Therefore, Farrell et al. anticipate claims 1, 3, 5-6, 9 and 11-13.

Response to Arguments

3. Applicant's arguments filed July 21, 2010 have been fully considered but they are not persuasive. Applicant argues that claim limitations 1(b) and 1(c) are not satisfied. Applicant further argues that a continuous phase is a liquid part of a disperse system that also contains a dispersed phase. Applicant's submission on the term "continuous phase" has been fully considered, however, the policy of the office is to give the broadest reasonable interpretation to the meaning of a term consistent with the specification. See MPEP 904.01. It is well known in the chemical art that "in any mixture" of a dispersion or a solution, the major component is called the continuous or external phase wherein the "phases may be either solid, liquid or gaseous." See the Condensed Chemical Dictionary, 1971, Van Nostrane Reinhold Co., (8th ed. by Gessner Hawley), p. 674, "Phase" (2). In the present application, there is nothing in the specification to indicate that the composition to be released is limited to liquid. Therefore, given the broadest reasonable interpretation consistent with the specification, the term "continuous phase" includes semi-solid, solid and liquid phases.

Farrell et al. teach a composition comprising anhydrous lactic acid as the major component and thus the instant claim limitation is met.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. The rejection of claims 1, 3-6, 9 and 11-14 and 16 under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 6,063,390) (issued May 16, 2000) as evidenced by ChemBrief (Optigel SH Synthetic Silicate, June 2003, Vol. 3, Iss. 2) is maintained.

Regarding claims 1, 3, 6, 11 and 13, Farrell et al. teach an effervescent cleansing composition which comprises a mixture of an acid material such as citric acid and an alkaline material such as sodium bicarbonate (abstract). Water contact causes the combination to effervesce (abstract). The alkaline material is a substance which can generate a gas such as carbon dioxide when contacted with water and the acidic material (column 2, lines 19-23). In one embodiment, Farrell et al. teach a composition comprising potassium bicarbonate, lactic acid (satisfying claim 1a, 1b, 1d and 1f), sodium sulfosuccinate present at 11.6% by weight (satisfying claim 1e) and Optigel SH (sodium magnesium silicate) (satisfying claim 1c and e) (Table IV). However, Farrell et al. fail to teach that the alkaline material in Table IV is a peroxide. The broad teachings of Farrell et al. cure this deficiency.

Regarding claim 4, Farrell et al. fail to teach the particle size of the acid or alkaline material. However, MPEP 2144.05 states that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation" quoting *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Therefore, because the general use of the reactive components is known in the art, it is not inventive to discover the optimum particle size for one of the components.

Regarding claims 5 and 12, ChemBrief discloses that Optigel SH has a particle size of about 0.05 microns and forms a lamella structure upon contact with water and surfactants (p. 1-3). Farrell et al. explain that Optigel SH improves after feel properties on skin (column 4, lines 38-39).

Regarding claim 9, the remaining components in the formulation of Table IV are either polar, non-polar and/or combinations thereof (Table IV).

Regarding claim 14, Farrell et al. teach that the alkaline material is an anhydrous salt of carbonates, bicarbonates, alkaline peroxides and azides (column 2, lines 19-30).

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the invention to have substituted a peroxide for a bicarbonate. One would have been motivated to do so because Farrell et al. teach that both peroxides and bicarbonates are suitable alkaline materials for use in the invention.

Regarding claim 16, Farrell et al. teach that the formulation of Table IV comprises anhydrous lactic acid is present at 45.4% by weight but fail to teach that the carrier contains an oil and an emulsifier. However, the broad teachings of Farrell et al. cure this deficiency.

Farrell et al. teach the incorporation of emollients and oil components as skin benefit agents. See col. 2, lines 51 - col. 3, line 56. Thus incorporating the emollient oil component and emulsifier to provide to the skin moisturizing benefits and to stabilize the composition would have been obvious to one of ordinary skill in the art. Claims 4, 14 and 16 are either ranges or simple substitutions suggested by Farrell et al. and Farrell

et al. does not teach away from ranges or simple substitutions suggested by Farrell et al.

Response to Arguments

8. Applicant's arguments filed July 21, 2010 have been fully considered but they are not persuasive. Applicant argues that Farrell et al. teaches away from reducing the degree of intimate contact of the dry reactive agents. This is believed to be an argument against Farrell et al. teaching each limitation of claim 1. Because the rejection of claims 1, 3, 5-6, 9 and 11-13 under 35 U.S.C. 102(b) is maintained, the rejection under 35 U.S.C.(a), is maintained.

Applicant also argues that sodium magnesium silicate is not an organophilic particle. Applicant has submitted definitions of "organophilic" and "organophilicity" which define organophilicity as "attraction of nonpolar substances (organic molecules) to each other. Applicant also points to *non-limiting examples* of inventive organophlic particles. However, ChemBrief teaches that the chemical composition of Optigel SH is similar to Bentone, which is used as an organophilic particle stabilizer in the present invention. Additionally, the reference teaches that sodium magnesium silicate forms lamellar surfactant phases upon contact with water at ambient temperature.

9. **The rejection of claim 15 under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 6,063,390) (issued May 16, 2000) as evidenced by ChemBrief (Optigel SH Synthetic Silicate, June 2003, Vol. 3, Iss. 2) as applied to claims 1, 3-6, 9, 11-14 and 16 above, and further in view of Sun et al. (US 2004/0062735) (pub. Apr. 1, 2004) is maintained.**

Regarding claim 15, Farrell et al. teach each limitation of claim 1 but fail to teach, compounds capable of generating sulfide ions when reacted with an alkaline metal and water. Sun et al. cure this deficiency.

Sun et al. teach a dry article comprising an insoluble substrate, at least one oxidizing agent and at least one reducing agent, wherein the suitable oxidizing agents include alkaline metal salts and the reducing agents include sulfides and sulfites (column 4, line 40 - column 5, line 22).

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Farrell by incorporating the depilatory components in the skin treatment composition as motivated by Sun, because Sun et al. teach that depilatory agents can be delivered to the skin in a similar dry article. A skilled artisan would have had a reasonable expectation of successfully producing a dry effervescent cosmetic pouch comprising depilatory agents that can be used by wetting with water prior to or during said application.

Response to Arguments

Applicant's arguments filed July 21, 2010 have been fully considered but they are not persuasive. Applicant argues that Sun et al. fail to remedy the deficiencies of Farrell et al. and ChemBrief. Because the rejections based on Farrell et al. and ChemBrief are maintained, the rejection based on Farrell et al., ChemBrief and Sun et al. is maintained.

Conclusion

No claims are allowable.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicoletta Kennedy whose telephone number is (571)270-1343. The examiner can normally be reached on Monday through Friday 11:30 to 8:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Gollamudi Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. K./
Examiner, Art Unit 1611

/Sharmila Gollamudi Landau/

Supervisory Patent Examiner, Art Unit 1611